

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2016

Delivered on: 20.07.2016

Coram:

The Hon'ble Mr. Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.No.352 of 2008

and

M.P.No.1 of 2008

M/s.Vimal Pharma
Rep.by its Partner
Smt.Chandana Jain

.. Appellant

Vs.

1. Union of India
Rep.by Director of (Supplies) Department
of Supply and Disposals
Madras

2. Brijendra Singh Meena
The Sole Arbitrator

(Cause title accepted vide order of Court
dated 28.10.2008 made in M.P.No.1 of 2008)

.. Respondents

This Appeal is preferred under Order XXXIV (1) of O.S.Rules
r/w Clause 15 of the Letters Patent Act against the order of
this Court dated 17.6.2008 in Tr.O.P.No.751 of 2006.

For Appellant : Mrs.Abitha Banu for
M/s.Surana & Surana

For Respondents : Mr.N.Rajan for R1
R2 - arbitrator

JUDGMENT
(JUDGMENT OF THE COURT WAS DELIVERED
BY A.SELVAM, J.)

Challenge in this Original Side Appeal is to the order
dated 17.6.2008 passed in Transfer O.P.No.751 of 2006 by the
learned Single Judge of this Court.

2. The appellant herein, as petitioner, has filed Transfer Original Petition No.751 of 2006 on the file of this Court under section 30 of the Arbitration Act, 1940 praying to set aside the award dated 19.1.2004 passed by the second respondent herein.

3. It is averred in the petition that the first respondent has called for tender so as to supply of cotton wool absorbent. The petitioner has accepted the same. A risk purchase contract has come into existence on 20.10.1983. For due performance, the petitioner has furnished bank guarantee dated 17.8.1983 valid upto 31.10.1984. Under the terms of the contract, the petitioner has supplied 49,570 Kgs., of cotton wool absorbent for a total value of Rs.10,30,024.96 from 28.2.1984 to 31.7.1984. The petitioner has supplied 3,877.50 Kgs., of Cotton wool absorbent and raised a bill on 1.8.1984 for a sum of Rs.76,542.70 towards 95% of the value of the good supplied. The petitioner has also supplied cotton wool absorbent under various contracts entered into prior to the present agreement. Since non-payment has been made to the petitioner, it leads to financial problem. The petitioner has sought extension of delivery period. The first respondent by his letter dated 4.1.1985 extended the delivery period upto 31.3.1985. Once again the petitioner has sought extension upto 31.8.1985. The petitioner has received a letter dated 11.6.1985, wherein it is stated that contract in question has been cancelled. The petitioner has issued a Notice on 16.7.1985. The petitioner has called upon the first respondent to appoint an arbitrator so as to adjudicate the dispute and accordingly, an arbitrator has been appointed, wherein the first respondent has claimed liquidated damages. The arbitrator has allowed the same without looking into the period of limitation and also the damages as on 31.3.1985. Under the said circumstances, present petition has been filed for claiming the relief sought therein.

4. The learned Single Judge, after considering the contentions put forth on either side has dismissed the petition. Against the dismissal order, present Original Side Appeal has been preferred at the instance of the petitioner, as appellant.

5. The learned counsel appearing for the appellant/petitioner has contended to the effect that in the arbitration proceedings, the first respondent has claimed liquidated damages as on 31.3.1985 and the same is barred by limitation and the learned Single Judge, without considering the plea of limitation raised on the side of the appellant/petitioner, has erroneously dismissed the petition and therefore, the impugned order passed by the learned Single Judge is liable to be set aside.

6. Per contra, the learned counsel appearing for the first respondent has contended that as per contract entered into between the appellant/petitioner and the first respondent, the first respondent is entitled to claim liquidated damages. Under such circumstances, the first respondent has claimed the same as on 31.3.1985 and the learned Single Judge, after considering the plea of limitation raised on the side of the appellant/petitioner has rightly dismissed the petition and therefore, the order passed by the learned Single Judge does not call for any interference.

7. It is an admitted fact that in between the appellant/petitioner and the first respondent, an agreement has come into existence on 20.10.1983, wherein the terms and conditions have been clearly mentioned. Only on the basis of contract dated 20.10.1983, on the side of the first respondent, a counter claim has been made in the arbitration proceedings. The arbitrator/second respondent herein has allowed the same.

8. The learned Single Judge has also considered the plea of limitation on the basis of Article 112 of the Limitation Act, 1963 and ultimately found that the counter claim made in the arbitration proceedings on the side of the first respondent is not barred by limitation.

9. It is an admitted fact that the first respondent has claimed liquidated damages as on 31.3.1985 and the same has also been mentioned in the contract in question. Since the first respondent is nothing but Union of India, the Court has to necessarily look into Article 112 of the Limitation Act, 1963 and the same reads as follows:

	Description of appeal	Period of limitation	Time from which period begins to run
112	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person

10. From a mere perusal of Article 112 of the Limitation Act, 1963, it is made clear that if a claim is made by the State, the limitation is thirty years and not three years.

11. In the instant case, the first respondent, as stated earlier, is nothing but Union of India and it has claimed liquidated damages as on 31.3.1985. The arbitration proceeding has been initiated in the year 2003. Since arbitration proceeding has been initiated in the year 2003, as per Article 112 of the Limitation Act, 1963, counter claim made on the side of the first respondent is not barred by limitation and therefore, the contention put forth on the side of the appellant/petitioner does not hold good.

12. The learned Single Judge, after considering the rival contentions raised on either side, has rightly dismissed the petition and in view of the discussions made earlier, this Court has not found any error nor illegality in the order passed by the learned Single Judge and therefore, the present Original Side Appeal deserves to be dismissed.

In fine, this Original Side Appeal is dismissed with cost. The order passed by the learned Single Judge in Transfer Original Petition No.751 of 2006 dated 17.6.2008 is confirmed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Sub Assistant Registrar
Original Side,
High Court, madras.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.Surana & Surana, advocate, sr.40873

+1 cc to Mr.N.Rajan, SCGSC, sr.40699.

nm(co)
krd 24/8

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